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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,570	07/30/2003	Elmer M. Johnson	1111.03001	1569

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EXAMINER	
ESTREMSKY, GARY WAYNE	
ART UNIT	**PAPER NUMBER**
3676	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/604,570	JOHNSON ET AL.	
	Examiner	Art Unit	
	Gary Estremsky	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,8-12,17 and 19* is/are rejected.

7)☒ Claim(s) *5-7,13-15,18 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 August 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *9/29/03 10/03/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,116,434 to Bernstein.Bernstein '434 teaches Applicant's claim limitations including : a "channeled extension beam" - 25, a "means for manually selectively rotatably clamping,..." - 64. Preamble recitation of capability to perform an intended use ("adapted to assist in retaining a pair of doors in a closed state") does not patentably distinguish from the structure of the prior art which is inherently capable of being used to assist in retaining a pair of doors closed. It has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art

apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The clamping structure of the reference is equivalent to that disclosed and is disclosed to perform the broadly-recited function. Recitation of "by applying an external manual force in conjunction with manual forward or reverse rotation" has been considered does not clearly define the "external manual force" in such a way as to distinguish from squeezing the knob of the prior art or otherwise applying the force inherently need to 'grip' and rotate the knob. The law of anticipation requires that a distinction be made between the invention described or taught and the invention claimed. It does not require that the reference "teach" what the subject patent teaches. Assuming that a reference is properly "prior art," it is only necessary that the claims under consideration "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or "fully met" by it. *Kalman v. Kimberly-Clark Corp.*, 218 USPQ 789. Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

3. Claims 1, 9, 17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,367,700 to Carnicero.

Carnicero '700 teaches Applicant's claim limitations including : a "channeled extension beam" - 9, a "means for manually selectively rotatably clamping,..." - including 3,4 where interpretation of the claims' scope and meaning is generally parallel to that detailed above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 2-4, 8, 10-12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,116,434 to Bernstein.

Although Bernstein '434 does not explicitly list the beam being made from any of the specific materials listed, the reference does explicitly disclose use of "plastic" at col 3; line 33. The examiner takes Official Notice that any one of the materials listed is well known to those of ordinary skill in the art for forming rigid structures whereby one of ordinary skill in the art would have found it an obvious design choice at the time of the invention to form the beam from any one of the materials to optimize corrosion-resistance, cost, manufacturability, etc where the choice of any one of the materials listed would not otherwise affect function of the device. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

As regards claim 3, although Bernstein '434 does not explicitly disclose the material of the different parts of the clamping means (65), it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to form at least the handle (72) and/or pad 74 from any one of the listed materials where Examiner takes Official Notice that the materials are well known

in the art for their material properties making them suitable for such use. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not otherwise affect function of the device.

As regards claim 8, although the reference does not disclose indicia on the handles to explain how to use same, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the word 'turn', 'tighten', or an 'arrow' as might be desired since the addition of addition would not otherwise affect function of the device and amounts to little more than a design choice. See MPEP 2112.01.

6. Claims 2-4, 8, 10-12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,367,700 to Carnicero.

Although Carnicero '700 does not explicitly list the beam being made from any of the specific materials listed, the examiner takes Official Notice that any one of the materials listed is well known to those of ordinary skill in the art for forming rigid structures whereby one of ordinary skill in the art would have found it an obvious design choice at the time of the invention to form the beam from any one of the materials to optimize corrosion-resistance, cost, manufacturability, etc where the choice of any one of the materials listed would not otherwise affect function of the device.

As regards claim 8, although the reference does not disclose indicia on the handles to explain how to use same, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the word 'turn', 'tighten', or an 'arrow' as

might be desired since the addition of addition would not otherwise affect function of the device and amounts to little more than a design choice.

7. Claims 1-4, 8-12, 16, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3,367,700 to Carnicero in view of U.S. Pat. No. 5,579,561 to Smith.

While it is examiner's position that Carnicero '700 anticipates/makes obvious invention for the reasons stated above, in hopes of expediting prosecution as much as possible the Smith '561 reference is cited for its teaching that it is well known in the art of turn knobs to provide a knob with means to prevent infants from effectively operating the knob. In that respect, Smith '561 teaches a knob where an external compressive force in the axial direction must be applied before rotation of the knob will be effective in operating 43. it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the latch of Carcinero '700 with child safety turn knobs such as that shown in Smith '561 in order to prevent infants from effectively operating the knob as taught by Smith '561 in order to prevent a toddler from opening the doors to which the lock is applied.

Although Carnicero '700 does not explicitly list the beam being made from any of the specific materials listed, the examiner takes Official Notice that any one of the materials listed is well known to those of ordinary skill in the art for forming rigid structures whereby one of ordinary skill in the art would have found it an obvious design choice at the time of the invention to form the beam from any one of the materials to

optimize corrosion-resistance, cost, manufacturability, etc where the choice of any one of the materials listed would not otherwise affect function of the device.

As regards claim 8, although the reference does not disclose indicia on the handles to explain how to use same, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the word 'turn', 'tighten', or an 'arrow' as might be desired since the addition of addition would not otherwise affect function of the device and amounts to little more than a design choice.

Allowable Subject Matter

8. Claims 5-7, 13-15, 18, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,547,236 to Gregory.

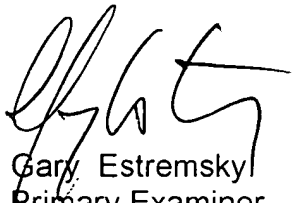
U.S. Pat. No. 5,826,923 to Bethurem.

U.S. Pat. No. 6,443,441 to Buitenhuis.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
Art Unit 3676